

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-80128-CR-CANNON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE MURILLO,

Defendant.

_____ /

DEFENDANT'S UNOPPOSED PSI OBJECTION

Defendant, George Murillo, by and through undersigned counsel, files the following objection to the Presentence Investigation Report (PSI):

At paragraph 16, the four level “specific offense characteristic” for “trafficking” of firearms does not apply in this case. The parties agree that as a matter of law Mr. Murillo’s offense conduct of selling or attempting to sell two of his personal firearms to one individual does not qualify as “trafficking” of firearms. This agreement is consistent with the plea agreement, at DE 23 and summarized in paragraph 4 of the PSI, which notes that the parties agreed that no specific offenses characteristics apply.

While the defense would note that the guideline commentary is not binding pursuant to the Eleventh Circuit’s recent en banc decision in United States v. Dupree, No. 19-13776 (Jan. 18, 2023), the commentary itself indicates that the trafficking enhancement requires the individual taking possession of the firearm to have a prior

conviction for a crime of violence, a controlled substance offense, or a misdemeanor crime of domestic violence. *See* USSG 2K2.1 N.13(B). There is no evidence in this case that the individual Mr. Murillo attempted to sell his personal firearms met these criteria. As such, even if the commentary were controlling or even persuasive, the enhancement does not apply in this case.

AUSA Laura Gatz was contacted and agrees with the defendant that the trafficking enhancement does not apply in this case and that the four level enhancement should be removed from the guideline calculation.

Respectfully submitted,

MICHAEL CARUSO
FEDERAL PUBLIC DEFENDER

s/ Kristy Militello

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

*s/ Kristy Militello*_____

Kristy Militello